



# भारत का राजपत्र The Gazette of India

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सं. 25]

नई दिल्ली, शनिवार, जुलाई 24, 1993/श्रावण 2, 1915

No. 25]

NEW DELHI, SATURDAY, JULY 24, 1993/SRAVANA 2, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग-संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएँ  
Orders and Notifications issued by Central Authorities (other than Administrations of Union  
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 7 जुलाई, 1993

आ.अ. 101—भारत निर्वाचन आयोग 1991 की  
निर्वाचन अर्जी सं. 1 में गुजरात उच्च न्यायालय, अहमदाबाद  
के 7-अमरेली संसदीय निर्वाचन क्षेत्र से लोक सभा के लिये  
निर्वाचित श्री दिलीपभाई सेंघानी के निर्वाचन को प्रश्नगत  
करने वाले तारीख 28-4-1993 के निर्णय आदेश को  
लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43)  
की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित  
करता है।

[सं. 82/गुज.-लो.स./((1991 का 1)/93]

आदेश से,

बलवन्त सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 7th July, 1993

O.N. 101.—In pursuance of section 106 of the  
Representation of the People Act, 1951 (53 of 1951)

the Election Commission of India hereby publishes  
the Judgement dated 28-4-1993, of the High Court  
of Gujarat at Ahmedabad, in Election Petition No. 1  
of 1991, calling in question the election of Shri  
Dilipbhai Sanghani to the House of the People from  
7-Amreli Parliamentary Constituency.

[No. 82/GJ-HP|(1 of 91)|93]

By Order,

BALWANT SINGH, Secy.

IN THE HIGH COURT OF GUJARAT AT  
AHMEDABAD

ELECTION PETITION NO. 1 OF 1991

Becharbhai Madhabhai Palsana  
residing at Batarvadi,  
Amreli,

Petitioner

Versus

Shri Dilipbhai Sanghani  
residing at Sukhnathpara,  
Amreli.

Respondent

Mr. P.M. Raval, Advocate, for the petitioner.

Mr. H. L. Patel, Advocate, for the Respondent.

Coram : K.G. Shah, J.  
28-4-1993

Judgement recd. on : 13-5-1993

Title prepared on : 17-5-1993

ELECTION PETITION NO. 1 OF 1991  
April 28, 1993

Mr. K. G. SHAH.

Mr. P. M. Raval, Advocate, for the petitioner.

Mr. H.L. Patel, Advocate, for the Respondent.

CORAM : K. G. SHAH, J.

April 28, 1993

### ORAL JUDGEMENT

By this petition, under the provisions contained in Part VI of the Representation of the People Act, 1950 (for short "the Act"), the petitioner has called in question, the election of Respondent No. 1—Dilipbhai Sanghani—who has been declared elected as a member of the Lok Sabha on the 7 Amreli Parliamentary Constituency by a Notification dated June 17, 1991, on the ground that Respondent No. 1 and/or his election agent had, during the election campaigning which preceded the election which was held on June 15, 1991, resorted to various corrupt practices within the meaning of that expression as used in S. 123 of the Act.

2. According to the petitioner, Respondent No. 1 and/or his election agent and/or others with the consent of Respondent No. 1 and/or his election agent—Respondent No. 2—had committed correct practice of undue influence as defined in S.123(2), 123(3) and 123(3A) of the Act. The nomination papers for the Lok Sabha election which took place on June 15, 1991, were required to be filed between April 19, 1991 and April 26, 1991. As per the original calendar of election, the polling was to take place on May 20, 1991. However, the date of polling was subsequently adjourned to June 15, 1991, and on June 15, 1991, the polling took place. It is also the case of the petitioner that one Purshottam Rupala, who happened to be the President of Bharatiya Janta Party, Amreli District, was the election agent of Respondent No. 1. I may mention here that said Purshottam Rupala was joined in the petition as Respondent No. 2 and Mr. Manubhai Kotadia, who was the main rival candidate against Respondent No. 1 at the aforesaid election was also joined as Respondent No. 3 to the petition. However, the names of Purshottam Rupala—Respondent No. 2, and Manubhai Kotadia—Respondent No. 3, have been deleted by the court's order. Therefore, now only Dilipbhai Sanghani—the returned candidate—remains as the Respondent to the petition, and I will hereinafter refer to him as "the Respondent".

3. According to the petitioner, as an election strategy, a religious organisation named VISHWA HINDU PARISHAD ("VHP" for short) brought all religious heads of Hindu Religion all throughout the country,

and All India Dharmasabha was held which decided to actively campaign for vote in general election for the party, which will construct the temple of Lord Ram at Ayodhya, delete Article 370 from the Constitution of India and establish Hindu Religious Rule in the country. It may be noticed that at the aforesaid election, the Respondent was a candidate of Bhartiya Janta Party ("BJP" for short), while Mr. Manubhai Kotadia who was originally impleaded as Respondent No. 3 was a candidate of Janta Dal. It is the allegation of the petitioner that in order to support BJP, VHP resorted to different types of media propaganda. It is averred in the petition that VHP started campaigning for BJP by organising Dharma Sabha in different parts of the constituency right from March, 1991, and also started DHARMACHAKRA, RATH moving in different parts of the constituency and Dharam Sabhas. In all those meetings, according to the petitioner, the main thrust of the propaganda was by high-lighting the three demands referred to thereinabove, viz. (i) construct the temple of Lord Ram at Ayodhya; (ii) to delete Article 370 from the Constitution of India; and (iii) to establish Hindu Religious Rule in the country. It is the case of the petitioner that BJP had also raised three demands similar to those raised by VHP, viz. to construct the temple of Lord Ram at Ayodhya, to delete Article 370 from the Constitution of India, and to establish Hindu Religious Rule in the country. It is the contention of the petitioner that as far as he is aware, some of the objectives canvassed by VHP for achievement (of its goal) are also the part of election manifesto of BJP.

4. In paragraph 10 of the petition, petitioner has referred to Dharma Sabha Dharmachakra Rath having been taken out by VHP the election campaigning period, and about meetings held by VHP as which highly respected religious heads addressed the audience. In the last lines of para 10 of the petition, the petitioner has stated that in the background of the facts narrated by him earlier, he has given in the subsequent paragraphs of the petition, material facts regarding the corrupt practice alleged against the Respondent for setting aside the election of the Respondent.

5. In paragraph 11 of the petition, the petitioner has catalogued the various meetings held at different places in Amreli constituency on different dates for the propaganda, in support of the BJP and its candidate, i.e. the Respondent. According to the petitioner, those meetings were addressed by the Respondent as also by the election agent of the Respondent and other State and National leaders of BJP, and the main theme of the speakers at those meetings was putting forward the three demands referred to by me hereinabove. It is the case of the petitioner that the speakers who addressed the aforesaid meetings attempted to create enmity between Hindus and Muslims by referring to terrorism in Kashmir by high-lighting the atrocities alleged to have been committed on Hindus, etc.

6. In paragraphs 12 and 13 of the petition, the petitioner has given facts about some election meetings/meeting held by VHP at which the Respondent was present, and propaganda was made by the speakers on communal lines.

7. In paragraph 14 of the petition, the petitioner has stated that a meeting was organised and held at Amreli on 29-4-1991, which was addressed by Sadhwiji Rutumbhara Devi. At the aforesaid meeting, Respondent No. 2 (Purshottam Rupala—the election agent of the Respondent) was present. Rutumbharaji is a very powerful speaker. In that paragraph it is also stated that the address by Rutumbharaji was preceded by the speech by Mr. Pravinbhai Togadia, the President of VHP, Gujarat State and at that meeting Shri Shivanandji Maharaj and other religious leaders had also addressed the audience. It is stated in that paragraph that the respondent had also averred garland to Sadhwiji Rutumbharaji, in order to make a show that the meeting was independent of the BJP.

8. In paragraph 17 of the petition, the petitioner stated that Devi Rutumbharaji while addressing the meeting stated that the construction of Ram Janambhoomi was not a question of bricks and stones or the piece of land but was a question of self-respect of Hindus and for that purpose they will achieve the construction of temple. She also referred to the destruction of Kashi temple of Vishwanath and Krishna temple of Mathura. She exhorted the audience as to how can they forget Ram Temple. While referring to the position of Hindus in Kashmir, she promoted or attempted to promote the feelings of enmity and hatred between Hindus and Muslims on the ground of religion by stating that Jaggmohan was called back in order to satisfy the Muslims, and stated that the Muslims should mix with Hindus just like sugar mixes in milk, but if they stay like lemon in milk, the milk will split and become savour though its value increases because Panir is made from it, but everybody knows what happens to lemon. Lemon will ultimately be consigned to dust-bin. Rutumbharaji is alleged to have stated to the audience to test themselves whether they move with umbrella if there was rain in Pakistan. She also told the audience that when there was a war in Gulf they (Muslims) spoke the slogan "Saddam Husein Zindabad". She asked the audience as to why they (the Muslims) did not play Holi when Hindus can eat 'Khir' on Idd day. She asked a further question to the audience as to why the Muslims don't listen to Arati at the time of Bang, while Hindus do listen to Bang at the time of Arati. She then highlighted the various habits of Muslims which are contrary to Hindus, and she ridiculed Muslims. She also stated that the atrocities were being committed in Kashmir on Hindus, and Hindu ladies were being given burns on their things. She also told the audience that Muslims could marry four wives and produce 35 children just like bugs and mosquitoes. With these appeals to the audience, as stated by the petitioner in the petition, Rutumbharaji called upon Hindu to unite and told the audience that the people should vote for the party which will hoist saffron flag at Lal Killa of Delhi. Then she asked the audience to shout slogan with her. The slogan is mentioned in paragraph 17 in Gujarati language, when in effect would mean :

"Say with pride, we are Hindus and Hindustan is ours."

She asked the audience to raise the aforesaid slogan at the highest pitch of their voice.

9. In paragraph 18 of the petition, the petitioner stated that the aforesaid speeches by the speakers, and that would include the speech by Rutumbharaji (some portion of which the petitioner has extracted in paragraph 17 of the petition) were fiery and inflammatory in nature. The petitioner averred in paragraph 18 of the petition that the Respondent is a Hindu. It is the say of the petitioner that it was clear from the speeches of the speakers at the meeting that was held, that the voters were called upon to vote for BJP and its candidate—the Respondent, and that clearly amounted to corrupt practice to seek votes on the ground of religion by the returned candidate.

10. In paragraph 19 of the petition, the petitioner stated that the dominant theme (of the respondent and the speakers at the meeting) was also to create hatred towards Muslims by referring to various acts of atrocities in Kashmir and also atrocities of distributing the pamphlets by Muslim Rulers and construction of Mosque in the places and that would clearly amount to corrupt practice committed by the speakers within the definition of the expression as given in S. 123(3A) of the Act. The petitioner has alleged in para 19 of the petition that the aforesaid corrupt practices were committed by the returned candidate or his election agent and/or the speakers at the said meeting, with the consent of the respondent or his election agent.

11. In paragraph 20 of the petition, the petitioner has averred that at the meetings referred to in the earlier paragraphs of the petition, the speakers also appealed to the audience in the name of ban on cow slaughter, and assured the audience that if BJP came to power, it would ban cow slaughter in the country.

12. On page 23 of the petition begins paragraph 25, and the first three lines of that paragraph are on page 23 of the petition, while the remaining portion of that paragraph is on page 24 of the petition. In paragraph 25 of the petition, the petitioner has referred to another meeting that was held at Amreli on June, 1991. The petitioner has stated that he has reliably learnt that the respondent was present at the said meeting, and that the original Respondent No. 2, i.e. the election agent of the respondent was also present at the meeting, and he had addressed the meeting. That meeting was addressed by the leaders of BJP, viz. Ashok Bhatt, Bhimjibhai Patel, Parashottambhai Sojitra, and Shambhubhai Ramani. As stated in paragraph 25 on page 24 of the petition, while addressing the meeting Shri Ashok Bhatt stated that after June 15, 1991, the State will be governed by laws of Ramayan and Geeta and not by Sheriyat, and nobody will be surprised then. This statement stated to have been made by Ashok Bhatt at the meeting held at Amreli on June 3, 1991, is followed by the Gujarati version of that statement, and then ends paragraph 25 of the petition. On page 24 of the petition itself, paragraph 26 begins. In paragraph 26 of the petition, on page 24, the petitioner has stated that the aforesaid speech of Shri Ashok Bhatt clearly amounts to corrupt practice within the provisions of S. 123(3A) of the Act, in as much as it amounts to promotion or attempt to

promote feelings of enmity and hatred between Hindus and Muslims who are citizens of India on the ground of furtherance of prospects of election of the Respondent and for prejudicially affecting the original Respondent No. 3, i.e. Shri Manubhai Kotadia.

13. In paragraph 28 of the petition, the petitioner has stated that the facts stated by him in the earlier paragraph of the petition (relevant parts of which I have referred to hereinabove) do constitute corrupt practice of undue influence as defined in S. 123(2) and S. 123(3A) of the Act, and such corrupt practices have been committed by the respondent as also by original Respondent No. 2, i.e. the election agent of the Respondent, and/or by the speakers mentioned in the earlier part of the petition with the consent of the Respondent and/or his election agent. According to the petitioner, on that ground alone, the election of the respondent is liable to be set aside. Then the petitioner has stated in that paragraph 28 of the petition that he was not then presently in possession of the details about the speeches. But he has reliably learnt that Video and Audio cassettes were made by VHP or BJP with the consent of the respondent and/or the respondent's election agent. The petitioner has further stated that the said video cassettes were freely displayed through VCR and TV Set mounted and/or kept in jeep or matador, etc. Such cassettes were also displayed just in front of the main election officers of the returned candidate at Amreli and also at Kodinar and other election offices of the Respondent.

14. In paragraph 29 of the petition, the petitioner stated that he was not then presently in possession of the video cassette of the speeches made at the meeting of Sadhvi Rutumbhara Devi and others at Amreli on 29-4-1991. He then stated in that paragraph that he craved leave to suitably amend the petition to give further particulars in that behalf after collecting and obtaining the video and audio cassettes.

15. In paragraph 30 of the petition, the petitioner submitted that a meeting was arranged on 10-6-1991 at Bagasara in Amreli constituency, and at that meeting one important speaker did not come, and therefore, the cassette of speeches of Rutumbhara Devi and other speakers at the said meeting were displayed. At that meeting, according to the petitioner, the respondent and his election agent were present. In that paragraph 309, the petitioner craved leave to give particulars of the speeches after collecting the said cassette as well as audio cassette.

16. The petition was filed on July 30, 1991. In response to the summons, the respondent entered appearance and filed his written statement Exh. 5 on December 5, 1991. In the written statement, the Respondent traversed all the allegations made by the petitioner against him in the petition. In the view of the matter that I am inclined to take, it is not necessary for me to refer to the contents of the written statement in extenso. However, in order to appreciate the submission of Mr. H. L. Patel, the learned Advocate for the Respondent that the copy of the election petition supplied by the petitioner to the Respondent is not a true copy in as much as the

said copy does not contain the copy of page 24 of the original petition, reference is required to be made to paragraph 28 of the written statement. In paragraph 28 of the written statement, the Respondent denied the averments made by the petitioner in paragraph 25 of the petition. He denied that any meeting was held on 3-6-1991 at Amreli, and then he stated that he was not supplied with page 24 of the petition.

Thus, at the very outset, the respondent has stated in his written statement that the copy of the petition supplied to him does not contain the copy of page 24 of the original petition.

17. Issues were framed upon the pleadings of the parties and several witnesses have, so far, been examined in the matter. P. W. 27—Ramesh Kalubhai Dhadani was produced by the petitioner as a witness and during the chief-examination, Mr. P. M. Ravel, the learned advocate for the petitioner wanted to produce before the court a video cassette said to be covering the proceedings of the meeting held at Amreli on April 29, 1991, at which Sadhvi Rutumbhara Devi made speech which according to the petitioner was highly fiery and inflammatory, and which attempted to create hatred amongst the electorate on communal lines, some parts of which the petitioner has referred to in the petition. Mr. Ravel wanted to show the video cassette on a TV set by means of a VCR to the court in the presence of the parties and their advocates and in the presence of P. W. 27—Rameshbhai. When this attempt was made by Mr. Ravel, L. A. for the petitioner, Mr. H. L. Patel, L. A. for the Respondent strongly objected to that course being followed. On the question whether the course which Mr. Ravel wanted to be followed could be permitted to be followed was debated at the bar. Mr. Patel raised a further vital question by contending that the entire petition should be dismissed for the reason that the copy of the cassette which Mr. Ravel wanted to produce before the court and show to the court by means of a VCR and TV set has not been supplied to the respondent and therefore, the copy of the petition supplied to the respondent as given by the petitioner is not a true copy of the petition, and therefore, it does not conform to the requirement of S. 81(3) of the Act and the consequence thereof would be that the entire petition would be liable to be rejected. Mr. Patel took out another arm from his armoury and contended that as the copy of the petition supplied to the respondent does not contain page 24 of the original petition, the copy of the petition supplied to the respondent does not contain page 24 of the petition and therefore, the petition is liable to be rejected. As Mr. Patel raised the questions which go to the root of the matter, detailed arguments of the learned advocates were heard on these two submissions of Mr. Patel. The matter was thereafter adjourned, and after having considered the matter from all relevant angles, I am convinced that the submissions made by Mr. Patel deserve acceptance, and in that view of the matter, the petition is required to be rejected.

18. It is not in dispute that the copy of the video cassette which Mr. Ravel wanted to produce and wanted to show to the court by means of a TV set

and CVR has not been supplied to the Respondent. It is also not in dispute that the cassette has so far not been produced by the petitioner in the court. Copy of the cassette has also not been annexed to the petition.

19. According to Mr. Patel, in view of the averments made in the petition as regards the speech by Sadhwi Rutumbhara Devi, and in view of the allegation that at the meeting held at Amreli on April 29, 1991, whereat Sadhwi Rutumbhara Devi addressed the audience, not only that original Respondent No. 2, the election agent of the Respondent was present, but the respondent himself was present, and that the Respondent had offered a garland to Rutumbhara Devi with a view to making a show that the meeting was independent of the BJP, it has got to be said that the cassette which the petitioner now wants to produce and show to the court, forms an integral part of the petition and that being so, the petitioner was, in terms of S. 81(3) of the Act, required to submit alongwith his election petition, a copy of the cassette for being supplied to the Respondent, and such copy was required to be attested by the petitioner under his own signature to be a true copy of the cassette. In the submission of Mr. Patel, not only that the copy was required to be attested by the petitioner to be a true copy of the petition, but in fact the copy was required to be a true copy of the petition, and even though the petitioner might have made the endorsement under his signature on the copy of the petition, about it being the true copy, if in fact that copy is not a true copy, then here is clear violation of the mandatory requirement of S. 81(3) of the Act, and the consequence thereof would be, as mandated by S. 86(1) of the Act, dismissal of the petition.

20. On the other hand, Mr. Raval, submitted that though the petitioner, in the petition, has referred to certain statements said to have been made by Rutumbhara Devi at the meeting held at Amreli on April 29, 1991, those statements are merely parts of evidence and they do not form an integral part of the material facts on which the petitioner relies nor do they form the integral part of the full particulars of the corrupt practices which the petitioner alleges for having the election of the respondent set aside, and therefore, the petitioner was not required to furnish the copy of the cassette for being given to the respondent.

21. At the bar, various authorities were referred by the learned advocates for the parties.

In *Ch. Cubbarao vs. Member, Election Tribunal, Hyderabad and Others* AIR 1964 S.C. p. 1027 it has been posited :

“When S. 81(3) requires an election petition to be accompanied by the requisite number of copies, it becomes a requirement for the presentation of the election petition to the Commission, and therefore, a condition precedent for the proper presentation of an election petition. If that is a requirement of S. 81, no distinction can be drawn between the requirements of sub-section (1) and (2) and of sub-section

(3). If there is a total and complete non-compliance with the provisions of S. 81(3), the election petition might not be “an election petition presented in accordance with the provisions of this Part” within S. 80 of the Act. If there had been such a non-compliance with the requirement of sub-section (3) not merely the Election Commission under S. 85 but the Election Tribunal under S. 90(3) would prima facie not merely be justified but would be required to dismiss the election petition.”

In that decision, however, it has been held that “If there is substantial compliance with the requirements of S. 81(3), the election petition cannot be dismissed by the Tribunal under S. 90(3).”

22. In *Smt. Sahodrabai Rai vs. Ram Singh Aharwar and others*, AIR 1968 S.C. p. 1079, it is observed as follows :

“Under the Representation of the People Act, details of corrupt practice or averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondents if the requirement regarding service of the election petition is to be wholly complied with. But this does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petition. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof.”

23. In *Jagat Kishore Prasad Narain Singh vs. Rajendra Kumar Poddar and Others*, AIR 1971, S.C. p. 342, in Annexure ‘C’, relating to the particulars of corrupt practice mentioned in paragraph 25 of the election petition, it had been stated in the original that Shri Munshi Hansda, M.L.A. had offered money and promised to pay money to Shri Jetha Kiski, M.L.A. for casting his first preference vote in favour of respondent No. 1 at the M.L.A. Flat on 19-3-1968, but in Exh. ‘O’ (that was the copy of the petition supplied to the Respondent), mention had been made of the name of Paul Hansda, M.L.A. as the alleged offerer of money to Shri Jetha Kisku, M.L.A. In that case, the petition was dismissed inter alia on the ground of discrepancy between what was stated in the original petition and what was stated in the copy of the petition which was supplied to the Respondents. Their Lordships of the Supreme Court referred to the decision in the case of *Ch. Subbarao*,

AIR 1964, S.C. p. 1027 (supra), and with reference to the judgment of the trial court said :

“Admittedly Shri Munshi Hansda and Paul Hansda are members of the Patna Legislative Assembly. In the election petition it was stated that money was offered to Shri Jetha Kisku, M.L.A. by Munshi Hansda, but in Exh. ‘O’ it was stated that money was offered by Paul Hansda. This divergence was bound to mislead the contesting respondents and prejudice their defence. Pleadings in a case has great importance and that is more so in election petitions particularly when the returned candidate is charged with corrupt practice. He must know what the charge against him is so that he may prepare his defence. If relying on the allegations in the copy of the petition served on him, that the money was paid to Jetha Kisku through Paul Hansda, the 1st respondent had collected evidence to show that the allegation is false than the entire basis of his defence would have fallen to the ground because at a later stage he had to meet a totally different case. The law requires that a true copy of the election petition should be served on the respondents. That requirement has not been either fully or substantially complied with. Therefore, we have no doubt in our mind that the election petition is liable to be dismissed under Section 86 of the Act.”

24. In *M. Karunanidhi vs. H. V. Handa*, AIR 1983 S.C. p. 558, in the election it was averred that the returned candidate was guilty of corrupt practice under sub-sec. (6) of S. 123 of the Act by incurring or authorising expenditure in contravention of S. 77. It was alleged that he had failed to disclose certain items of expenditure in his statement of election expenses filed by him in connection with the election. The allegation related to an expenditure of about Rs. 50,000 in erecting fancy banners throughout the constituency and it was alleged that there were such fancy banners about 50 in number, the cost of each banner being not less than Rs. 1,000. It was averred that a photograph of one such banner was filed alongwith the petition. Though the petitioner had filed with the election petition a photograph of one such banner, a copy of the photograph was not annexed to the copy of the petition furnished to the returned candidate.

On these facts, the Supreme Court held “that the photograph was a part of the averment contained in the petition. In the absence of the photograph, the averment contained in the petition would be incomplete. The photograph was therefore, an integral part of the election. It follows that there was total non-compliance with the requirements of sub-section (3) of Sec. 81 of the Act by failure to serve the appellant with a copy of the election petition. The words “copies thereof” in sub-section (3) of Sec. 81 read in the context of sub-sec. (2) of S. 83 must necessarily refer not only to the election

proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein.”

25. In *Mithilesh Kumar Pandey, vs. Baidyanath Yadav and others*, A.I.R. 1984, S.C. p. 305, it has been enunciated that “before the election petition can be entertained, the copy sent to the elected candidate must be a true copy, failing which there would be a serious disobedience of the mandate contained in S. 81(3) which would be fatal to the maintainability of the said petition. To determine the question of non-compliance of Sec. 81(3) the following principles are well established :

- (1) That where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes which are of no consequence, the petition cannot be dismissed straightway under Section 86;
  - (2) A true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the court may not take notice thereof;
  - (3) Where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance of the provisions of Section 81(3) of the Act;
  - (4) *Prima facie*, the statute uses the words “true copy” and the concept of substantial compliance cannot be extended too far to include serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of Section 81(3) of the Act;
- and
- (5) As Section 81(3) is meant to protect and safeguard the sacrosanct electoral process so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation to the provisions of the said section.”

In that case, there were allegations of corrupt practices. Schedule-I to the election petition contained the list of persons through whom the corrupt practices were alleged to have been committed. In the copy of the petition supplied to the returned candidate there were mistakes as regards the names of the persons in the aforesaid list, viz., complete omission of some names which had been mentioned in the election petition, but not in the copy, giving wrong names, and some names given in the petition appeared to be males but in the copy they appeared to be females.

On these facts, it was held that . . . the mistakes in the copy of election petition were vital and

would seriously prejudice the defence. In the circumstances, the election petition was liable to be dismissed in limine”.

26. In *Rajendra Singh vs. Smt. Usha Rani and others*, A.I.R. 1984 S.C. p. 956, it has been held :—

“A perusal of Sections 81(3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if an election petitioner disregards the mandate contained in Section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed a limine under S. 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of S. 81(3) which is sufficient to entail a dismissal of the election petition at the best.”

27. Mr. H. L. Patel, L.A. very heavily relied upon the decision in the case of *U.S. Sasidharan vs. K. Karunakaran and another*, A.I.R. 1990 S.C. p. 924. That was also a case of Video Cassette. In that case the election petition and therefore, it was necessary to serve a copy thereof on the first respondent, and that having not been done, the election petition was dismissed under S. 86(1) of the Act. The question before the Supreme Court in that case was whether the video cassette in question could be said to be the integral part of the election petition. Their Lordships of the Supreme Court analysed the scheme of Ss. 81(3), 83 and 86(1) of the Act. With reference to Clauses (a) and (b) of S. 83 of the Act. Their Lordships have said that an election petition shall contain a concise statement of the material facts, and also set forth full particulars of the corrupt practices. These two requirements are also mandatory in nature. So whenever there is an allegation of corrupt practice, the election petition shall contain a concise statement of the material facts and must also set forth the full particulars of the corrupt practices alleged by the petitioner.

In paragraph 13 of the report, Their Lordships have said that when a candidate gets himself elected by adopting or committing any corrupt practice, his election must be set aside on proof of such corrupt practice. At the same time, the procedure prescribed by the Act for challenging an election must be strictly followed. So, if there be any deviation from or non-compliance of the provisions of S. 81(3), the court will have no other alternative than to dismiss the election petition. In that case, before the High Court, the grievance about the copy of the petition served to the returned candidate being not a true copy was based upon non-supply to the returned candidate, copies of the notice, photograph and the video cassette. However, before the Supreme Court, ultimately the matter boiled down to the case arising from the non-supply of the video cassette, to the returned candidate.

In paragraph 15 of the report, their Lordships said that “the material facts or particulars relating to any

corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied in-as-much as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition, and a copy of such document is not furnished to the respondent along with a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of Section 81(3) and, as such, the court has to dismiss the election petition under S. 86(1) for non-compliance with Section 81(3).”

28. In paragraph 16 of the report, Their Lordships said that “on the other hand, if the contents of the document in question are pleaded in the election petition, the document does not form an integral part of the election petition. In such a case, a copy of the document does not form integral part of the that will not be non-compliance with the provision of Sec. 81(3). The document may be relied upon as an evidence in the proceedings. In other words, when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent along with a copy of the election petition.”

In paragraph 17 of the report, Their Lordships have said that when the document forms an integral part of an election petition containing material facts or particulars of corrupt practice, any deviation from or non-compliance of the provisions of S. 81(3), the court will have no other alternative than to dismiss the election petition. In that case, before the High Court, the grievance about the copy of the petition served to the returned candidate being not a true copy was based upon non-supply to the returned candidate, copies of the notice, photograph and the video cassette. However, before the Supreme Court, ultimately the matter boiled down to the case arising from the non-supply of the video cassette, to the returned candidate.

In paragraph 16 of the report, Their Lordships said that “the material facts or particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied in-as-much as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of then a copy of the election petition without such a document is not complete and cannot be



said to be a true copy of the election petition. Copy of such document must be served on the respondents,

29. In view of the aforesaid principles which came to be deduced by the Supreme Court. Their Lordships, in paragraph 18 of the report, considered the question whether the Video Cassette in that case, which was mentioned in paragraph 5(xi) of the election petition formed an integral part of the election petition. In that case, though the video cassette was produced in a sealed cover alongwith the election petition, admittedly, a copy thereof was not served to Respondent No. 1. It was urged on behalf of the appellant before the Supreme Court that the video cassette was only an evidence of the facts stated in paragraph 5(xi) of the election petition. It was alleged in that case that at the instigation of the first respondent, the video cassette called "MALA-YUDE PUROGATHI" has been used in the constituency. It was further alleged that the persons whose speeches have been recorded in the video cassette regarding "progress of Mala" are two Government Officers named in paragraph 5(xi), and that the cassette has been used in the constituency at the instigation of the first respondent. This had been averred as a corrupt practice. It was also mentioned in that paragraph 5(xi) that the video cassette was produced with the election petition in a sealed cover. The corrupt practice that was alleged in paragraph 5(xi) fell within S. 123(7) of the Act. Relying upon the wording of S. 123(7) of the Act, it was contended on behalf of the appellant before the Supreme Court that the Speeches of the Government Servants as recorded in the video cassette, and alleged to have been used in the constituency at the instigation of the first respondent were not alleged in the election petition to have been used with a view to obtaining or procuring or abetting or attempting to obtain or procure any assistance for the furtherance of the prospects of the first respondent's election. The Supreme Court negatived that contention.

In paragraph 21 of the report, the Supreme Court said that "it is true that there is no allegation in paragraph 5(xi) that the video cassette was used by the first respondent for the purpose of any assistance for the furtherance of the prospects of his election. But, in the opinion of Their Lordships, it was apparent that such an allegation was implied in that paragraph. After alleging that the video cassette was used in the constituency at the instigation of the first respondent, it was alleged that the same constituted a corrupt practice which points to the only fact that the video cassette containing the speeches of the Government servants was used for the purpose of some assistance for the furtherance of the prospects of the election of the first respondent." "It was implied, said the Supreme Court, that the video cassette is referred to in paragraph 5(xi) in regard to the alleged assistance for the furtherance of the prospects of the election of the first respondent, and accordingly, the contents of the cassette are incorporated in that paragraph by reference. In other words, the cassette formed an integral part of paragraph 5(xi)."

In paragraph 22 of the report, Their Lordships have pointed out that it was clear from Item No. 1 of the List of Documents that it was the specific case

of the appellant that the video cassette was prepared at the instance of the first respondent for election propaganda, as stated in paragraph 5(xi) of the election petition. Whether it was so stated in Item no. 1 of the List of Documents or not, it was, as stated already, apparent on the face of the allegation in paragraph 5(xi) that it was used by the first respondent by way of assistance in furtherance of the prospects of his election, and so the video cassette formed an integral part of paragraph 5(xi). Their Lordships there held that "unless a copy of the video cassette was given to the first respondent, he would not know how the speeches of the said Government servants could assist the furtherance of the prospects of his election and would not be in a position to deal with the allegations made in paragraph 5(xi). The copy of the election petition which was served on the first respondent without a copy of the video cassette was not, therefore, a true copy of the election petition within the meaning of S. 81(3) of the Act."

30. In paragraph 26 of the report, Their Lordships considered the judgment in the case of *M. KARUNANIDHI vs. H. V. HANDE*, A.I.R. 1983 S.C. p. 558, and Their Lordships said that that was the most important case for their purpose I have hereinabove referred to that judgment in the case of *M. Karunanidhi*.

31. As noticed above, in the case of *M. Karunanidhi* (supra), the allegation of corrupt practice was based on the fact that the returned candidate had incurred or authorised to incur expenditure for election in contravention of S. 77. In that connection, it was alleged that the returned candidate had got erected fancy banners throughout the constituency and spent about Rs. 50,000 in so doing. A photograph of one of the banners was annexed to the petition, but the copy thereof was not supplied to the returned candidate. On those facts, the Supreme Court held that the photograph was a part of the averments contained in the petition, and in absence of the photograph, the averments contained in the petition would be incomplete. The photograph was therefore, an integral part of the election petition, and as the copy thereof was not served to the returned candidate, the petition was liable to be dismissed as the same did not conform to the mandatory requirements of Sec. 81(3) of the Act.

In the case of *U.S. Sasidharan* (supra) also the speeches of Government servants were said to have been recorded on a video cassette. The video cassette was produced before the court in a sealed cover with the election petition, but a copy thereof was not supplied to the returned candidate—Respondent no. 1 in that case. The Supreme Court once again held that the video cassette formed an integral part of the election petition, and the copy thereof having not been supplied to the respondent, the petition was liable to be dismissed under S. 86(1) of the Act as it did not conform to the mandatory requirement of S. 81(3) of the Act.

These two judgments, in my opinion, squarely apply to the facts of the present case.

32. I have hereinabove in extense referred to the averments made by the petitioner in the petition. In



the petition, the petitioner has contended that VHP organised meetings at which election propaganda for BJP and its candidate, i.e. respondent Dilipbhai Sanghani was made. The petitioner further alleged that at many of such meetings the respondent remained present. Coming to the relevant meeting held at Amreli on April 29, 1991, at which Sadhwiji Rutumbhara Devi made the speech, which is said to be inflammatory, and which is said to constitute corrupt practice at the election, it is the allegation of the petitioner that not only the respondent—returned candidate Dilipbhai Sanghani, but his election agent—original respondent no. 2. Purushottam Rupala, were present at that meeting. It is further alleged that Respondent No. 1 offered garland to Sadhwiji Rutumbhara Devi in order to make a show that the meeting was independent of the BJP. As noticed hereinabove, in paragraph 17 of the petition, some excerpts from the alleged speech of Sadhwiji Rutumbhara Devi have been given.

33. In paragraph 18 of the petition, it is stated that fiery and inflammatory speeches were made by the speakers; and the voters were called upon to vote for the BJP and its candidate Dilipbhai Sanghani, and those speeches, according to the petitioner clearly amounted to corrupt practice of seeking votes on the ground of religion at the election.

34. In paragraph 19 of the petition, the petitioner averred that the dominant theme of the speakers was to create hatred towards Muslims by referring to various atrocities in Kashmir, and about Muslim Rulers, and the construction of the Mosque and thus, the speakers at the meetings, committed corrupt practice within the definition of the expression as given in S. 123(3A) of the Act. In that paragraph, the petitioner submitted that that corrupt practice was committed by the returned candidate or his election agent, and/or by the speakers at the said meeting with the consent of Respondent No. 1 (the respondent—Dilipbhai Sanghani) and/or Respondent No. 2 (Purshottam Rupala, the election agent of the respondent). In paragraph 22 also, the petitioner averred that the corrupt practice was committed by the speakers at the meeting with the consent of Respondent No. 1 and 2 (i.e. the Respondent—the returned candidate and his election agent). In paragraph 28 of the petition, the petitioner stated that the facts averred by him in the earlier paragraphs of the petition constituted corrupt practice of undue influence as defined in S. 123(2) and S. 123(3A) of the Act which was committed by the respondent and his election agent or by the speakers mentioned in the petition with the consent of the returned candidate, and/or his election agent. The petitioner further averred in that paragraph 28 of the petition that he was not in possession of the details about the speeches, but then, he had reliably learnt that video and audio cassettes were made by VHP or BJP with the consent of the respondent and/or respondent no. 2, i.e. the election agent of the respondent. The statement in this paragraph that the petitioner, at the time the petition was presented, was not in possession of the details of the speeches, would go to show that what the petitioner averred in paragraph 17 of the petition is not the full and true account of the speech of Rutumbhara Devi made at the Amreli meeting on 29-4-1991, and that what is contained in paragraph 17 of the petition, most of which is devoted to what is said to have been spoken by

Rutumbhara Devi at the said meeting is only an except or a summary or a rough impression of what Rutumbhara Devi is said to have spoken at the said meeting. To put it differently, what is contained in paragraph 17 of the petition is not the exact speech of Rutumbhara Devi, said to have been given by her at the aforesaid meeting at Amreli on April 29, 1991. However, according to the petitioner, as reliably learnt by him, video and audio cassettes were made by VHP and BJP with the consent of the respondent (i.e. the returned candidate) and/or his election agent. Thus, it would be clear that the speech of Rutumbhara Devi was recorded on audio and video cassettes. As further averred by the petitioner in paragraph 28 of the petition that video cassette was freely displayed through VCR and TV set amounted or kept in jeep or matador, etc. Such cassettes were also displayed just in front of the main election offices of the returned candidate at Amreli and also at Kodinar, and other election offices of the respondent.

35. In paragraph 28 of the petition, the petitioner stated that he was then presently not in possession of the video cassette of the speeches made at the meeting by Sadhwiji Rutumbhara Devi and others at Amreli on April 29, 1991, and he craved leave to suitably amend the petition to give the full particulars in that behalf after collecting and obtaining the video and audio cassettes.

36. Mr. Raval, the learned Advocate for the Petitioner, as said above, wanted to produce the video cassette on which, according to him, the proceedings of the speech of Rutumbhara Devi at the aforesaid meeting have been recorded. That video cassette was brought to the court. Even a TV Set and a VCR were brought to the court, and the demonstration of the cassette was attempted to be made, at which point of time, Mr. H. L. Patel, the learned Advocate for the Respondent raised a strong objection to that course being adopted. This would mean that the petitioner has now got the video cassette with him, and yet, so far, he has not amended the petition, ven assuming that under law, he could have applied for the amendment of the petition.

37. In paragraph 30 of the petition, it is stated that at Bagesara meeting, an important speaker did not come and therefore, the cassette of the Speeches of Rutumbhara Devi and other speakers, at the said meeting were displayed. It is in the evidence of P.W. 27 that one election meeting was held by BJP at Amreli and it was announced that Uma Bharati will address that meeting P.W. 27 went to the venue of the meeting. But Uma Bharati did not come. According to P.W. 27, some cassettes were shown and the meeting then dispersed. The cassettes which were shown at that meeting were video cassettes, and they were screened on a TV set by means of a VCR. The cassettes showed Rutumbhara Devi as also the Kar Seva. Thus, going by the evidence of P.W. 27, in light of what is said in paragraph 30 of the petition, at places more than one, when some important speaker did not come at the meeting to address the audience, the video cassette covering the proceedings of the speech of Rutumbhara Devi was shown to the audience. Thus, the video cassette of the speech of Rutumbhara Devi by any account forms an integral

part of the election petition. Though the petitioner says in the petition that at the time he filed the petition, he was not in possession of the details of the speeches of the speakers, in paragraph 17 of the petition, he has given the brief outline of what Rutumbhara Devi is said to have spoken at the meeting held on April 29, 1991 at Amreli. In the petition, the petitioner has specifically averred that video cassette covering the proceedings of that meeting and the speech of Rutumbhara Devi was made by VHP & BJP with the consent of the respondent, and that video cassette was freely displayed through a VCR and TV set at various places, as referred to in paragraph 28 of the petition. It is further the case of the petitioner that Rutumbhara Devi and other speakers who addressed the audience committed corrupt practice with the consent of the respondent. Thus, the petitioner in order to have the election of the respondent set aside, relies heavily upon the corrupt practices committed by Rutumbhara Devi and other speakers, with the consent of the respondent. Allegations on that line have been made in the petition. However, in absence of the video cassette those allegations would be incomplete for, the proceedings of the meeting have been recorded on a video cassette. It is not disputed that the video cassette would be a document. Therefore, the proceedings of the meeting have been recorded on a document which is a video cassette. The petitioner has, as a part of his petition, averred corrupt practices having been committed by Rutumbhara Devi and other speakers, with the consent of the Respondent and/or his election agent. That would be certainly a material fact on which the petitioner relies for the purpose of having the election of the returned candidate—the respondent—set aside within the meaning of the expression “material fact” as used in S. 83(1) (a) of the Act. The same fact would also be the particular of the corrupt practice that the petitioner alleges, within the meaning of the expression “particulars of the corrupt practice” as used in S. 83(1) (b) of the Act. As said above, though in the petition, the petitioner craved leave to suitably amend the petition to give further particulars in that behalf, after collecting the video and audio cassettes, he has, so far, not made any attempt for amendment of the petition. Therefore, the petition, at this juncture, has to be taken as it is. In the petition, the allegation is that Rutumbhara Devi committed corrupt practices with the consent of the respondent and the proceedings of the speech of Rutumbhara Devi have been recorded on a video cassette. The case on this line is very much similar to the case of U. S. SASIDHARAN (supra) where also the Supreme Court was concerned with the case of a video cassette on which the speeches of the Government servants were said to have been recorded, and the copy of the cassette was not given to the returned candidate. Applying the same test as has been applied by Their Lordships of the Supreme Court in the case of U. S. SASIDHARAN, I have no doubt in my mind that the video cassette which Mr. Raval wanted to produce and show to the court, does form an integral part of the election petition. Copy thereof having not been given to the respondent, the copy of the election petition, supplied to the respondent is not a complete and true copy of the election petition. There was, therefore, breach of the mandatory requirement of S. 81(3) of the Act, and the petition

is, therefore, liable to be rejected under S. 88 (1) of the Act.

38. Mr. Raval, the learned advocate for the petitioner submitted that whereas in the case of M. KARUNANIDHI the photograph in question was produced alongwith the election petition, and whereas in the case of U. S. SASIDHARAN, the cassette was produced in a sealed cover alongwith the election petition, in the present case, the petitioner has not produced the video cassette or the copy thereof alongwith the petition, and that would be a feature which would distinguish the case before me from the cases of M. KARUNANIDHI (supra) and U. S. SASIDHARAN (supra). I think the argument cannot be accepted. Whether the original cassette was or was not produced alongwith the election petition, would not be that material as the question whether the cassette in question forms an integral part of the election petition. If the argument of Mr. Raval is accepted, then the petitioner in an election petition can easily get away from the mandatory requirement of S. 81 (3) of the Act by not producing the document which forms an integral part of the petition, alongwith the petition. The petitioner would conveniently not produce alongwith the petition, the relevant document which forms an integral part of the petition, and then contend that as he has not produced that document alongwith the petition, he was not bound to supply the copy thereof to the returned candidate. Such a result, I am sure, could never have been envisaged by the Legislature while enacting S. 81 (3), 83 (1) (c), 83 (2) and 86 (1) of the Act. If the argument of Mr. Raval is accepted, that would render the aforesaid provisions nugatory. In order to get out of the rigor of the mandatory provisions referred to above, the petitioner then has to do only this, that he would not annex to the petition, the relevant documents which form an integral part of the petition. If the argument of Mr. Raval is accepted, in that event, the petitioner could not be faulted for not having supplied a true copy of the petition, meant for being supplied to the returned candidate and the other respondents. The argument of Mr. Raval, therefore, obviously cannot be accepted.

39. As I see the petition, the averment about corrupt practice having been committed by Rutumbhara Devi by delivering fiery speech, with the consent of the respondent—the returned candidate in the case, is one of the material facts, on which the petitioner relies for the relief prayed in the petition. In any view of the matter, that is a fact which would form the particulars of the corrupt practice and that fact is recorded on a video cassette. Therefore, it has got to be said that the video cassette in question, forms an integral part of the petition. The copy thereof having not been supplied to the respondent, the petition does not conform to the mandatory requirement of S. 81 (3) of the Act, and therefore, it is liable to be rejected.

40. Mr. Raval, the learned Advocate for the petitioner submitted that it was only by way of indication of the evidence to be led at the trial that the petitioner in the petition referred to the speech of Rutumbhara Devi and others. In view of what I have stated above, this contention cannot be accepted.

41. Mr. Raval, then tried to rely upon the doctrine of “Substantial compliance”. He submitted that if the

requirements of S. 81 (3) are substantially complied with, the petition cannot be dismissed. I think, here again, Mr. Raval's submission cannot be accepted. As indicated herein above, the video cassette forms an integral part of the petition. Non-supply thereof to the respondent cannot be said to be only a minor deviation from the mandatory requirement of S. 81 (3) of the Act, and it cannot be said that the petitioner has substantially complied with the requirement of S. 81 (3) of the Act.

42. As seen above, in the case of JAGAT KISHORE PRASAD NARAIN SINGH (supra), in the original petition, the name of the offerer of money was stated to be SHRI MUNSHI HANSDA, M.L.A., while in the copy of the petition, that was served to the respondent, the name of the offerer was stated to be PAUL HANSDA, M.L.A.. Even such a variation between the original petition and the copy thereof served to the returned candidate has been held by the Supreme Court to be fatal to the maintainability of the petition. Here in the case before me, not only that in the petition, elaborate averments about the video cassette having been made by VHP and/or BJP with the consent of the respondent have been made, but also the averments about the video cassettes having been displayed or used at the meeting and other places have been made, and yet, a copy of the video cassette has not been given to the respondent alongwith the copy of the election petition. The copy of the election petition supplied to the respondent, therefore, cannot be said to be a true copy.

43. In the aforesaid view of the matter, I think on the first ground raised by Mr. Patel itself, the petition is liable to be rejected.

44. Mr. Patel nextly submitted that the copy of the petition supplied to the respondent does not contain the copy of page 24 of the original petition, and therefore also, the petition is liable to be rejected.

Hereinabove, I have referred to the contents of page 24 of the original petition. The petition came to be filed before this Court on July 30, 1991. On October 4, 1991, summons of the petition was ordered to be issued to the respondent. In response to the summons, the Respondent filed his written statement Exh. 5, on December, 1991. This written statement has been filed by the Respondent on verification. In paragraph 28 of the written statement, the respondent has stated that he has not been supplied with page 24 of the petition. Under Rule 15(v) of the Election Rules framed by this High Court, the respondent is required to serve a true copy of the written statement together with all annexures on the petitioner or his advocate, on or before filing the same in the office of the High Court. Accordingly, undisputedly, the respondent has served to the petitioner's advocate, a copy of this written statement Exh. 5. In that written statement, as stated just now, the respondent has made a pointed grievance that the copy of the Page 24 of the original petition has not been served to him, and yet, till the time Mr. Patel raised the objection on this line on April 17, 1993 the copy of page 24 of the petition was not supplied to the Respondent. Though the respondent, in his written statement filed as

early as December 5, 1991 made a pointed grievance of the fact that the copy of page 24 of the petition was not supplied to him, that statement made by the respondent on verification, in his written statement, has so far not been controverted by the petitioner by saying that he has, in fact, supplied to the respondent, a copy of page 24 of the petition. It would, therefore, be obvious that the grievance of the respondent that he has not been supplied the copy of page 24 of the petition is true. On page 24 of the petition, the petitioner has referred to the speech of Shri Ashok Bhatt of BJP made by him at the meeting held on June 3, 1991 at Amreli, and in that meeting Shri Ashok Bhatt is said to have told the audience that after June 15, 1991, the State will be governed by the laws of Ramayan and Geeta and not by Shariyat and nobody will be surprised then. It is stated in paragraph 25 on page 24 of the petition that at that meeting the respondent and his election agent (original respondent no. 2) were present. At page 24 in paragraph 26 of the petition, the petitioner stated that the speech of Shri Ashok Bhatt amounted to corrupt practice within the provisions of S. 123(3A) of the Act, and that was made for the furtherance of the prospects of the election of the respondent and for prejudicially affecting the election of the defeated candidate Shri Manubhai Kotadia. The facts stated on page 24 of the petition are the fact about corrupt practice committed by Shri Ashok Bhatt in presence of the respondent and his election agent. Therefore, the facts stated on page 24 of the petition are material facts, and the copy of that page 24 of the petition having not been given to him, the respondent is deprived of the opportunity of understanding the case that he has to meet at the trial. The copy of the petition sans the copy of page 24 thereof can, by no stretch of reasoning, be said to be the true copy of the petition. In that view of the matter also, there is clear violation of the mandatory requirement of S. 81(3) of the Act entailing dismissal of the petition under S. 86(1) of the Act.

45. Mr. Raval, made an attempt to submit that originally in the petition there were three respondents, and the petitioner has supplied to the Registry of this court, three copies of the petition, and if, out of those three copies, one copy which has gone to the respondent—the returned candidate—did not contain page 24, that would not prove fatal to the maintainability of the petition for, may be, the other two copies of the petition supplied by the petitioner, would be complete copies, inasmuch as they must have contained the copy of page 24 of the petition. I am afraid, the submission of Mr. Raval, cannot be accepted.

46. As held in Rajendra Singh vs. Sm. Usha Raul and others, A.I.R. 1984, S.C., p. 956, it is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of S. 81(3), which is sufficient to entail a dismissal of the election petition at the behest.

Therefore, even if it is assumed that the other two copies which must have been supplied by the petitioner at the time he filed the petition, were correct and true copies which also contained the copy of page 24 of the petition, as the copy of the election petition supplied to the present respondent—the returned candidate—is incomplete and not a true copy, inasmuch as it does not contain the copy of page 24 of the election petition, the election petition is liable to be rejected and it is no part of the duty either of the respondent or of the court to wade through the record in order to find out whether the two other copies supplied by the petitioner were true copies.

47. Mr. Raval, the learned advocate for the petitioner nextly submitted that under S. 38(1) of the Act, the petition can be dismissed only at the threshold, and not after the trial has commenced. This submission cannot be accepted. What can be done at the threshold also can be done after the trial has commenced, for, their is violation of the mandatory requirements of the provisions of the Act. Those violations cannot be waived by the Respondent, and so far as the case of video cassette is concerned, it was only when P.W. 27 came to be examined as a witness that, on behalf of the petitioner, an attempt was made to produce and show that video cassette by means of a TV Set and a VCR. The objection on the part of the respondent that the copy of the petition supplied to him is not a true copy because he had not been supplied with the copy of the video cassette could permissibly be taken at the time when the video cassette was sought to be produced and shown to the court. I have earlier dealt with the argument of Mr. Raval that the video cassette has not been produced alongwith the election petition.

48. Having considered the matter from all relevant angles and having read the authorities cited at the bar. I am convinced that the copy of the election petition supplied to the respondent is not a true copy of the original election petition, firstly for the reason that the video cassette referred to in the petition as an integral part of the petition was not supplied to the respondent; and secondly because the copy of the election petition supplied to the respondent did not contain the copy of page 24 of the original election petition. On both these grounds, the copy of the election petition supplied to the respondent is not a true copy; therefore, the petition does not comply with the mandatory requirement of S. 31(3) of the Act. The petition is therefore, required to be rejected. Mr. Patel, the learned advocate for the Respondent agrees that the parties should be left to bear their respective costs of the petition.

49. In the result, the election petition is rejected. The parties are left to bear their own costs.

The substance of this decision be intimated to the Election Commission, and the Speaker of the Lok Sabha at the earliest, and the authenticated copy of this judgment be sent to the Election Commission.  
Assistant Registrar

High Court of Gujarat

Ahmedabad

By the order of the Court

Sd/-

D. B. DHOLAKIA, Dy. Registrar